Speech by Senator Howard
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The joint resolution creating that committee intrusted them with a very important inquiry, an inquiry involving a vast deal of attention and labor. They were instructed to inquire into the condition of the insurgent States, and authorized to report by bill or otherwise at their discretion. I believe that I do not overstate the truth when I say that no committee of Congress has ever proceeded with more fidelity and attention to the matter intrusted to them. They have been assiduous in discharging their duty. They have instituted an inquiry, so far as it was practicable for them to do so, into the political and social conditions of the insurgent States. It is very true, they have not visited any localities outside of the city of Washington in order to obtain information; but they have taken the testimony of a great number of witnesses who have been summoned by them to Washington, or who happened to be in Washington, and who had some acquaintance with the condition of affairs in the insurgent States. I think it will be the judgment of the country in the end that that committee, so far as the procuring of testimony upon this subject is concerned, has been not only industrious and assiduous, but impartial and entirely fair. I know that such has been their aim. I know that they have not been their purpose to present to Congress and the country the most favorable and most patriotic or anything of a party tendency. Our anxiety has been to ascertain the whole truth in its entire length and breadth, so far as the facilities given us would warrant.

One result of their investigations has been the joint resolution for the amendment of the Constitution of the United States now under consideration. I do not propose to enter into any discussion, reaching through weeks and even months, they came to the conclusion that it was necessary, in order to restore peace and quiet to the country and again to impart vigor and efficiency to the laws, and especially to obtain something in the shape of a security for the future against the recurrence of the enormous evils under which the country has labored for the last four years, that the Constitution of the United States ought to be amended; and the project which they have now submitted is the result of their deliberations upon that subject.

The first section of the amendment they have submitted for the consideration of the two Houses relates to the privileges and immunities of citizens of the several States, and to the rights and privileges of all persons, whether citizens or others, under the laws of the United States. It declares that—

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its Jurisdiction the equal protection of its laws.

It will be observed that this is a general prohibition upon all the States, as such, from abridging the privileges and immunities of the citizens of the United States. That is its first effect. It is not only directed to those States from depriving any person of life, liberty, or property without due process of law, or denying to any person within the jurisdiction of the State the equal protection of its laws.
do not come within the sweeping clause of the Constitution authorizing Congress to pass all laws necessary and proper for carrying into execution the powers there given. The foregiving or granted powers, but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them force and effect.

The States are not restrained from violating the principles embraced in them except by their own local constitutions, which may be altered from time to time, and the people of every State may come to the conclusion that the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect those great fundamental rights, unalienable and indefeasible, which are set forth under the present amendment? As I have remarked, they are not powers granted to Congress, and therefore it is necessary, if they are to be effectuated and enforced, as they necessarily ought to be, that additional power should be given to Congress to that end. This is done by the fifth section of this amendment, which declares that "the Congress shall have power to enforce by appropriate legislation the provisions of this article." Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guaranties and guarantees of the Constitution.

The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person who may be, of life, liberty, or property, without due process of law, and denying him the equal protection of the laws of the State. This abolishes all class legislation in the States and does away with the injustice which has so often been so loudly denounced as a code not applicable to another. It prohibits the hawking of a black man for a crime for which the white man is not to be hanged. It also puts an end to the denial of the equal privileges and rights as a citizen with the same shield which it throws over the white man. Is it not time, Mr. President, that we extend to the black man the same protection given to the white man under the equal protection of the law? Ought not the time to be now passed when one measure of justice is to be meted out to a member of one race and a different one to a member of another race? Is it possible that a code not applicable to another, to be meted out to a member of another caste, both castes being alien citizens of the United States, both bound to obey the same laws, to sustain the burdens of the same Government, and to owe the same allegiance to the same Constitution and to God for the deeds done in the body? But, sir, the first section of the proposed amendment does not give to either of these classes any right save and except to that protection which the equal protection of the law is, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves. Subject to a convention with the fifth, as very important. It will, if adopted by the States, forever disable every one of them from passing laws trenching upon those rights, which are not republican gover- 

ment, and one that is really worth maintaining.

The second section of the proposed amendment reads as follows: "The right of the citizens of the United States to vote shall be appportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, there shall be differences between the number of actual citizens of each State and the number of non-citizens, such differences shall be computed by excluding from the number of citizens all persons excepted from taxation under the Constitution of the United States, and the proportion of its male citizens not less than twenty years of age, and who have never taken arms in behalf of the Union, shall be computed with the proportion which the number of such male citizens bears to the whole number of male citizens of the State; and the right of suffrage shall be denied to all persons not having a full right to citizenship in the State in which they reside."

That is, citizens as to whom the right of voting is denied or abridged—shall bear to the whole number of male citizens not less than twenty years of age. It is very true, and I am sorry to be obliged to acknowledge it, that this section of the amendment does not recognize the authority of the United States over the question of suffrage in the several States at all; nor does it recognize, much less secure, the right of suffrage to the colored race. I wish to meet this question fairly and frankly; I have nothing to say against the freedmen. I do not say that if I could have my own way, if my preferences could be carried out, I certainly should secure suffrage to the colored race to some extent at least; for I am opposed to the exercise of the right of suffrage by the freedmen. But if I could not obtain universal suffrage in the popular sense of that expression, I should be in favor of restricted, qualified suffrage for the colored race. I do not think that the question of what measure we can pass through the two Houses, but the question really is, what will the Legislatures of the various States to whom these amending clauses have been added do in the premises; what is it likely will meet the general approval of the people who are to elect the Legislatures, three fourths of whom must ratify the Constitution before it shall have the force of constitutional provisions?

Let me not be misunderstood. I do not intend to say, nor do I say, that the proposed amendment, section two, proscribes the color line as an unanswerable objection to that question, as I shall show before I take my seat. I could wish that the elective franchise should be extended equally to the white man and to the colored race. I would desire for the sake of the people of the colored race, if I could, that all things should be done in the full consideration, to restrict what is known as universal suffrage for the purpose of securing this equality, I would go for a restriction; but I do not think impracticable at the present time, and so did the committee.

The colored race are destined to remain among us. They have been in our midst for more than two hundred years; and the idea of the people of the State or the nation, of the colored race, that they can be put down by any measure or measures to which they may resort to expel or expatriate that race from their limits and on to a foreign country, is an absurdity. It is visionary. The thing can never be done; it is impracticable. For we or for woe, the destiny of the colored race in this country is wrapped up with our own; they are to remain in our midst, and here spend their years and here bury their fathers and finally repose themselves. We may regret it. It may not be entirely compat- tible with the progress and the civilization of the human race. We cannot help it. Our forefathers introduced them, and their destiny is to continue among us; and the practical question which now presents itself to us is as to the best and most peaceful way to do that.

The committee were of opinion that the States are not yet prepared to sanction so funda- mental a change as would be the concession of equal suffrage. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject. It was our opinion that three fourths of the States of this Union could not be induced to adopt the amendment, even in any degree or under any restriction, to the colored race. We may be right in this apprehension, or we may be in error. Time will test that. It is a question which we may test with patience the movements of public opinion upon this great and absorbing question. The time may come, I trust it will come, indeed, when the great body of the people of the States whose number throughout the country, and prosperity of those States depend upon it. But it is really for their interest that they should not remain in their midst a race of pariahs, so circumstanced as to be obliged to bear the burdens of Government, and to obey its laws without any participation in the enactment of the laws.

The second section leaves the right to regulate the elective franchise still with the States, and does not meddle with that right. Its basis of representation is numbers, whether the numbers be white or black; that is, the whole population except untaxed Indians and persons not having a full right of citizenship. Formerly under the Constitution, while the free States were represented only according to their respective numbers of men, women, and children, all of course counted, they have obtained the advantage of being represented according to their number of the same free classes, increased by those fifths of the slaves whom they were allowed to count in the enumeration of the population. The free States, the whole property entered into the basis of representation. John Jacob Astor, with his fifty millions of property, was entitled to cast but one vote; of the whole property held by the raggedest beggar that strolled the streets. Property has been rejected as the basis of just representation; but still the advantage that was given to the slave States under the Constitu- tion enabled them to send at least twenty-six members to Congress in 1830, based entirely upon what they treated as property—a number sufficient to determine almost every contested question that might come before the House of Representatives.

The three-fifths principle has ceased in the destruction of slavery and in the enfranchise- ment of the Negro. The principle on which this Constitution change will increase the number of Representatives from the once slaveholding States by nine or ten. That is to say, if the present basis of representation, as established in the Constitution, shall remain operative for the future, making our calculations upon the census of 1850, the enfranchisement of their slaves would increase the number of Representatives nine or ten, I think at least ten; and under the next census it is easy to see that this number would be still increased; and the important question why it is that the slave States, whose colored population are excluded from the privileges of voting, shall be increased in the next Congress, while they are excluded from the franchise? Shall the recently slavesholding States, while they exclude from the ballot the negro, the mulatto, and the aborigine, be allowed to include the whole of that population in the basis of their representation, and thus to obtain an advantage which they did not possess under the organic act of emancipation? In short, shall we permit it to be enacted that by the result of the enfranchise- ment of the negro and of the mulatto shall be increased the number of the Representatives in the House of Representatives? I object to this. I think it would be more fair and reasonable to grant them an additional number of Representa- tives simply because in consequence of their own misconduct they have lost the property which they once possessed, and which served as a basis for their part in the House of Representa- tives.
The committee thought this should no longer be permitted, and they thought it wiser to adopt a general principle applicable to all the States alike, namely, that where a State excludes any part of its male citizens from the elective franchise, it shall lose Representatives in proportion to the number so excluded; and the clause applies not to color or to race at all, but simply to the fact of the individual exclusion. Nor did the committee adopt the principle of making the ratio of representation depend upon the number of voters, for it so happens that there is an unequal distribution of voters in the free States; and in the slave States, the old States have relatively proportionally fewer than the new States. It was desirable to avoid this inequality in fixing the basis. The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.

By the census of 1860, the whole number of colored persons in the several States was four million four hundred and twenty-seven thousand and sixty-seven. In five of the New England States, where colored persons are allowed to vote, the number of such colored persons is only twelve thousand one hundred and thirty-two. This leaves of the colored population of the United States in the other States unrepresented, four million four hundred and fourteen thousand nine hundred and thirty-five, or at least one seventh of the whole population of the United States. Of this last number, three million six hundred and fifty thousand were in the eleven seceding States, and only five hundred and forty-seven thousand in the four remaining slave States which did not secede, namely, Delaware, Maryland, Kentucky, and Missouri. In the eleven seceding States the blacks are to the whites, basing the calculation upon the census of 1860, nearly as three to five. A further calculation shows that if this section shall be adopted as a part of the Constitution, and if the late slave States shall continue hereafter to exclude the colored population from voting, they will do it at the loss of at least twenty-four Representatives in the other House of Congress, according to the rules established by the act of 1850. I repeat, that if they shall persist in refusing suffrage to the colored race, if they shall persist in excluding that whole race from the right of suffrage, they will lose twenty-four members of the other House of Congress. Some have estimated their loss more and some less; but according to the best calculation I have been able to make, I think that will be the extent. It is not to be disguised—the committee have no disposition to conceal the fact—that this amendment is so drawn as to make it the political interest of the once slaveholding States to admit their colored population to the right of suffrage. The penalty of refusing will be severe. They will undoubtedly lose, and lose so long as they shall refuse to admit the black population to the right of suffrage, that balance of power in Congress which has been so long their pride and their boast.